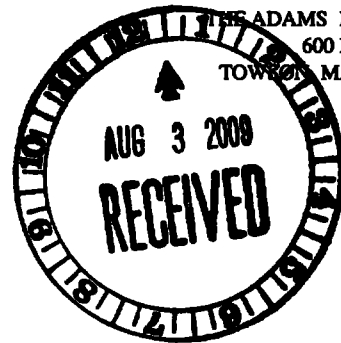


LAW OFFICES OF  
LOUIS E. GITOMER

225430

LOUIS E. GITOMER  
LOU\_GITOMER@VERIZON.NET

August 3, 2009



THE ADAMS BUILDING, SUITE 301  
600 BALTIMORE AVENUE  
TOWSON, MARYLAND 21204-4022  
(202) 466-6532  
FAX (410) 332-0885

Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

RE: Finance Docket No. 35285, *CSX Transportation, Inc.—Trackage Rights  
Exemption—Birmingham Southern Railroad Company*

Dear Acting Secretary Quinlan:

Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 180.2(d)(8), a diskette with the file in WORD and pdf format, 20 extra copies of the map, and a check covering the \$1,200.00 filing fee for the Notice.

Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Louis E. Gitomer'.

Louis E. Gitomer  
Attorney for CSX Transportation, Inc.

Enclosures

ENTERED  
Office of Proceedings  
AUG - 3 2009  
Part of  
Public Record

**FEE RECEIVED**

AUG - 3 2009

SURFACE  
TRANSPORTATION BOARD

**FILED**  
AUG - 3 2009  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35285

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—  
BIRMINGHAM SOUTHERN RAILROAD COMPANY



VERIFIED NOTICE OF EXEMPTION

**FILED**  
AUG - 3 2009  
SURFACE  
TRANSPORTATION BOARD

**ENTERED**  
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Public Record

**FEE RECEIVED**  
AUG - 3 2009  
SURFACE  
TRANSPORTATION BOARD

Steven C. Armbrust  
CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202  
(904) 359-1229

Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer, LLC  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(410) 296-2250  
Lou\_Gitomer@verizon.net

Attorneys for: CSX Transportation, Inc.

Dated: August 3, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35285



CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—  
BIRMINGHAM SOUTHERN RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION

CSX Transportation, Inc. (“CSXT”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. §1180.2(d)(7) for generally overhead trackage rights over the rail line of the Birmingham Southern Railroad Company (“BSRR”) between the crossover of CSXT and BSRR in Woodward, AL, approximately milepost 6, Station 307+00 (Point A on the Map in Exhibit A), and Bessemer, AL at the turnout to BSRR’s Private Intermodal Container Facility (the “ICTF”), milepost 9, Station 10+00 (Point B on the Map in Exhibit A), a distance of approximately three miles (the “Line”). The trackage rights will enable CSXT to directly transport containers of CSX Intermodal, Inc. (“CSXI”) directly to and from the ICTF. The parties have entered a written agreement for the trackage rights (Exhibit B), which are not sought as a responsive application in a rail consolidation proceeding.

Pursuant to the Surface Transportation Board’s (the “Board”) regulations at 49 C.F.R. § 1180.4(g), CSXT submits the following information:

**Section 1180.6 Supporting Information**

**(a)(1)(i) Description of Proposed Transaction**

CSXT is acquiring generally overhead trackage rights over the rail line of the Birmingham Southern Railroad Company (“BSRR”) between the crossover of CSXT and BSRR

in Woodward, AL, approximately milepost 6, Station 307+00 (Point A on the Map in Exhibit A), and Bessemer, AL at the turnout to BSRR's Private Intermodal Container Facility (the "ICTF"), milepost 9, Station 10+00 (Point B on the Map in Exhibit A), a distance of approximately three miles.

Under the Trackage Rights Agreement (the "TRA"), in addition to the overhead intermodal service, CSXT is permitted, as required, to occupy the Line for purposes of doubling trains in and out of the ICTF and for setting out any bad ordered cars within the premises of the ICTF.

The carriers involved in this transaction and their business addresses are:

CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202

Birmingham Southern Railroad Company  
1200 Penn Avenue, Suite 300  
Pittsburgh, PA 15222

Questions and correspondence concerning this notice may be addressed to:

Steven C. Armbrust  
CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202  
(904) 359-1229

Louis E. Gitomer  
Law Offices of Louis E. Gitomer, LLC  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(401) 296-2250  
Lou\_Gitomer@verizon.net

**(a)(1)(ii) Consummation Date**

The transaction is scheduled to be consummated on or shortly after September 2, 2009.

**(a)(1)(iii) Purpose Sought to be Accomplished**

CSXT is seeking to improve direct intermodal container access to and from the Mercedes Benz USA facility in Bessemer, AL through use of the ICTF.

**(a)(5) List of States in which the Party's Property is Situated**

CSXT owns and operates about 23,000 miles of railroad in the States of Alabama, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and the Provinces of Ontario and Québec.

BSRR owns and operates railroad property in the State of Alabama.

The overhead trackage rights are located in the State of Alabama.

**(a)(6) Map**

A map illustrating the involved trackage rights is attached as Exhibit A.

**(a)(7)(ii) Agreement**

A copy of the redacted Trackage Rights Agreement is attached as Exhibit B. An unredacted copy of the TRA has been filed under seal.

**Labor Protection**

Any employees of CSXT or BSRR who are adversely affected by the acquisition of the overhead trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. —Lease and Operate*, 360 I.C.C. 653 (1980) (“*N&W*”).

**Section 1180.4(g)(4)(i) Supporting Information**

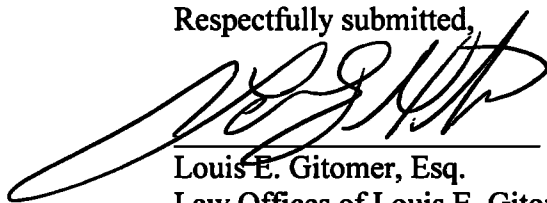
(i)(A) Pursuant to the TRA, CSXT is prohibited from using the Line for interchange with any other carrier that connects with the Line. BSRR has agreed to grant CSXT overhead trackage rights for the sole purpose of CSXT carrying intermodal container traffic from and to CSXT's line and the ICTF for the purpose of enhancing the efficiency of intermodal container service to the MBUSA facility in Bessemer, AL.

(i)(B) A copy of the TRA is attached as Exhibit B.

**Environmental and Historic Matters**

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Respectfully submitted,



Steven C. Armbrust  
CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202  
(904) 359-1229

Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer, LLC  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204  
(410) 296-2250

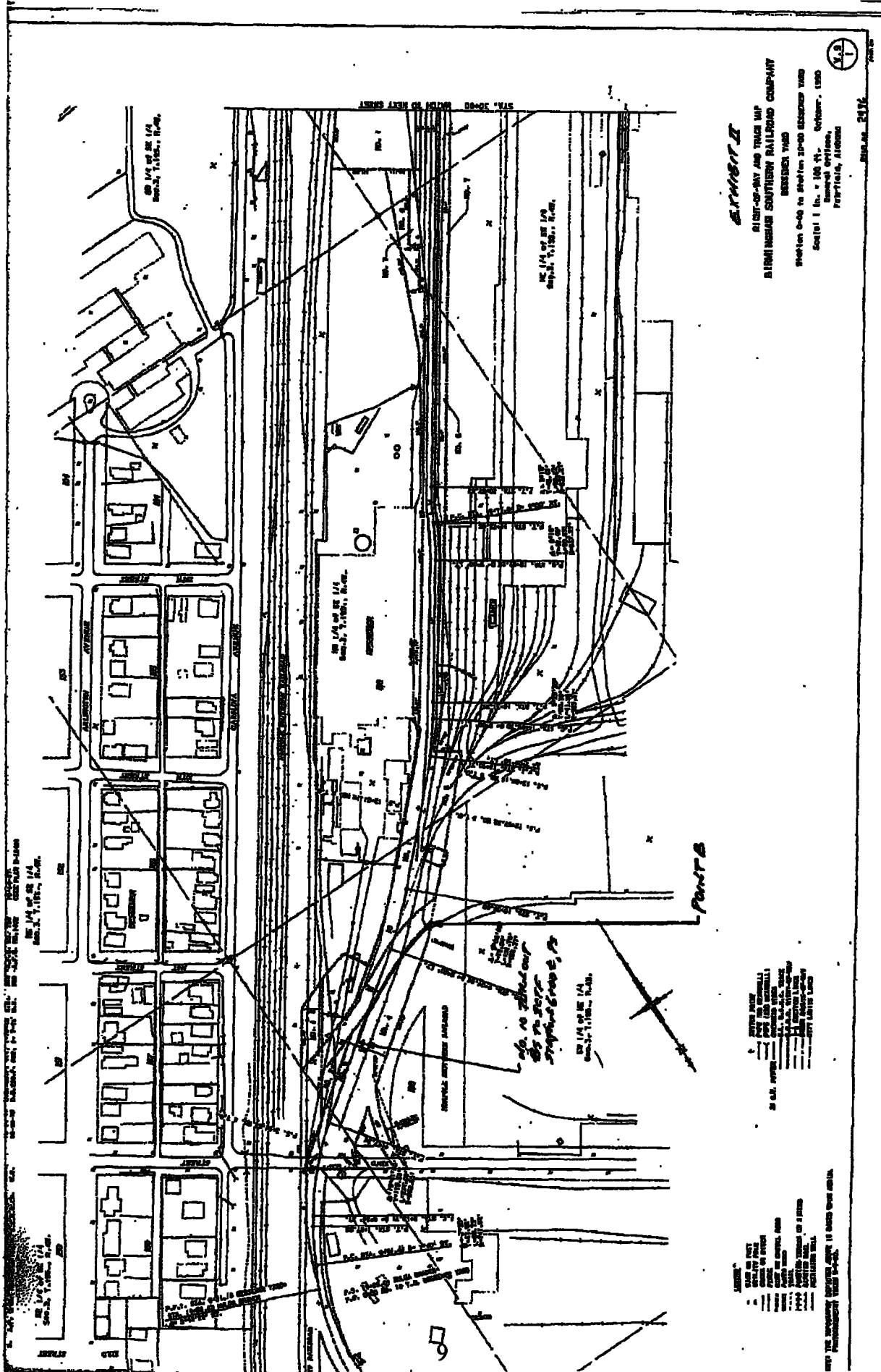
Attorneys for: CSX Transportation, Inc.

Dated: August 3, 2009

# **EXHIBIT A-MAP**







# **EXHIBIT B-AGREEMENT**

**TRACKAGE RIGHTS AGREEMENT**  
**Between**  
**BIRMINGHAM SOUTHERN RAILROAD COMPANY**  
**And**  
**CSX TRANSPORTATION, INC.**

**THIS AGREEMENT**, entered into as of this 31st day of July, 2009, by and between BIRMINGHAM SOUTHERN RAILROAD COMPANY, an Alabama corporation, ("Owner"), and CSX TRANSPORTATION, INC., a Virginia corporation ("User"), each sometimes referred to as a "Party" or together as "Parties;"

**WITNESSETH:**

**WHEREAS**, In connection with its transportation of containers and trailers (hereinafter jointly, the "Containers") to and from the Private Intermodal Container Facility located at or near Bessemer, Alabama (the "ICTF"), for the account of CSX Intermodal, Inc., (a Delaware corporation and an affiliate of User, referred to herein as "CSXI"), User has requested trackage rights over Owner's line of railroad between connections of Owner and User at Bessemer, and crossover located in the vicinity of Woodward and Bessemer, AL; and;

**WHEREAS**, Owner is agreeable to granting such non-exclusive rights to User under the following terms and conditions;

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, agree as follows:

**ARTICLE 1. GRANT OF TRACKAGE RIGHTS**

Subject to the terms and conditions herein provided, Owner hereby grants to User the non-exclusive right to operate its trains, locomotives, cars, and equipment with its own crews and solely for the purpose of the transportation of Containers to and from the ICTF located at or near Bessemer, AL for the account of CSXI over approximately three (3) miles of Owner's track situated within Owner's right-of-way between "Point A", located approximately at Milepost 6, Station 307+00, as shown in the attached "Exhibit I", and "Point B", located approximately at Milepost 9, Station 10+00 as shown in the attached "Exhibit II" ("Subject Trackage"). Point A is in the vicinity of User/Owner crossover in Woodward, AL and Point B is in the vicinity of Owner turnout to ICTF in Bessemer, AL. This portion of the grant includes the authority for User as required, to occupy the Subject Trackage for purposes of doubling trains in and out of ICTF and for setting out any bad ordered cars within the premises of ICTF (the "Trackage Rights").

## **ARTICLE 2. USE OF SUBJECT TRACKAGE**

- A. User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage. User shall not authorize any third party to operate over all or any portion of the Subject Trackage.
- B. Except as otherwise provided in Article 1 of this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storing or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- C. Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

## **ARTICLE 3. RESTRICTION ON USE**

The Trackage Rights are granted for the sole purpose of User using same for handling only the Containers to and from the ICTF. Except as specified in Article 1 relative to doubling and setting out bad orders, User's movements shall consist only of bridge movements handling the Containers only between the terminals of the Subject Trackage, and User shall not perform any local freight service whatsoever at any point located on the Subject Trackage.

## **ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS**

- A. When operating over the Subject Trackage, User's locomotives and crews shall be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of Owner and User. All control and usage shall be subject to the approval of Owner's representative or designee.

## **ARTICLE 5. COMPENSATION**

- A. User shall pay directly to Owner the compensation herein specified.
- B. The factor to be used in calculating payments to be made by User to Owner for User's

Trackage Rights covered by this Agreement shall be

C.

- D. On or about the tenth day of each month, User shall forward to Owner, in care of Owner's Treasury Department, a statement identifying the number of Containers, loaded and empty, moved by User into ICTF and moved by User out of ICTF during the immediately previous calendar month. On the basis of the statement submitted to Owner, Owner shall render billing to User for User's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.
- E. User shall furnish Owner information concerning all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. User and Owner shall determine the minimal data requirements.

#### **ARTICLE 6. REVISION OF CURRENT CHARGES**

- A. The Current Charges shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Current Charges shall be revised upward or downward to the third decimal place each year, beginning with the bill rendered for the month of July 2010 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charges shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2009 Index for the first annual adjustment) as related to the index for the previous calendar year (2008 Index for the first annual adjustment) and applying that percent to the Current Charges.
- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2009; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2008; "C" to be the Current Charges; and "D" to be the percent of increase or decrease; the revised Current Charges stated herein would be revised by the following formula:

$$(1) \frac{A-B}{B} = D$$

$$(2) (D \times C) + C = \text{revised Current Charges, effective July 1 of the year being revised}$$

- D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.
- E. Should use of any part of the Subject Trackage by User extend beyond the Term of this Agreement expressed in Article 20, the compensation provided for in this Agreement shall be open for renegotiation at the option of either Party. In the event Owner and User shall fail to reach agreement upon the terms of such compensation, the Parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

#### **ARTICLE 7. PAYMENT OF BILLS**

- A. All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of two (2) years from the date of billing.
- B. Bills rendered by Owner to User pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

#### **ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE**

- A. Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. Owner shall

take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, User shall not, by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporations, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

- B. Owner shall perform, at the expense of User, such additional maintenance as User may reasonably require or request.

#### **ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS**

- A. Existing connections or facilities, that are jointly used by the Parties shall continue to be maintained, repaired and renewed by and at the expense of the Party responsible for such maintenance, repair and renewal under existing agreements.
- B. Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
  - (i). User or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the Parties.
  - (ii). Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the additional tracks located on the right-of-way of Owner which connect the respective lines of the Parties.. Upon termination of this Agreement, Owner may at its option remove the portion of such trackage and appurtenances as may be located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner shall credit User the current fair market value for said salvage.

#### **ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS**

- A. Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterments to, or retirements from, the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a

part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

- B. If Owner and User agree that changes in, or additions and betterments to, the Subject Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

#### **ARTICLE 11.        MANAGEMENT AND OPERATIONS**

- A. The Parties, with respect to the use of the Subject Trackage and the operation of trains, locomotives, cars and equipment thereon and thereover, shall comply with all applicable laws and all applicable rules, regulations, ordinances and orders promulgated by any state, municipality, board or commission having jurisdiction for the protection of persons, the environment, or otherwise ("Orders"). If the failure of a Party to comply with an Order results in any fine, penalty, cost or charge being imposed or assessed on or against the other Party, the Party so failing shall reimburse and indemnify the other Party within thirty (30) days for or on account of such fine, penalty, cost or charge, and all expenses and reasonable attorneys' fees incurred in defending any action which may be brought against the other Party on account thereof, and shall, in the event of any such action, upon notice thereof being given to it by the other Party, defend such action free of cost, charge and expense to the other Party.
- B. User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, cars and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed Plate H clearance dimensions as published in Railway Line Clearances and 160,000-pound gross weight per articulated platform or 286,000-pound gross weight on single non-articulated car, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.
- C. User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.



- D. Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner shall schedule the investigation and notify User's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner shall provide its regulations, supplements, and safety rules to User at no cost.
- E. If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User, except officers, determined by Owner, as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification shall be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- G. If Owner conducts an investigation, its officer shall conduct the investigation, but an officer of User shall be present to assure compliance with User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner shall promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer shall arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.
- H. Subject to the provisions of Article 2 of this Agreement, the trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either Party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- I. In the event that a train of User shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's locomotives, cars or equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, crippled or otherwise defective locomotives or cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may

be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

- J. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.
- K. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, then User shall bear all cost and expense for any such retained or additional employees, including without limitation, all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

#### **ARTICLE 12. MILEAGE AND CAR HIRE**

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

#### **ARTICLE 13. CLEARING OF WRECKS**

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

#### **ARTICLE 14. LIABILITY**

The responsibility and liability between Owner and User for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including the Subject Trackage, property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss",

shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, cars or equipment, and/or employees of only Owner or User, then the involved Party should be solely responsible for the Loss, even if caused partially or completely by the other Party.
- B. If a Loss occurs on the Subject Trackage involving the trains, locomotives, cars or equipment and/or employees of both Owner and User, then: (i) the Parties are solely responsible for any Loss to their own employees, trains, locomotives, cars and equipment in their own account including lading and (ii) the Parties are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving Owner or User and a third party or parties shall be construed as being the sole responsibility of the Owner or User as appropriate.
- D. Whenever any liability, cost, or expense is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of a Party, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said Parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- F. For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 B (ii), all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect,

indemnify, and save harmless Owner and its parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

- H. If any suit or action shall be brought against a Party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- I. Notwithstanding any and all of the forgoing provisions of this Article 14, in the event a Loss occurs while the Subject Trackage is being used by a Party, and such Loss is attributable solely to the willful or wanton negligence of only Owner or User, then the Party which was so willfully or wantonly negligent shall be solely responsible for such Loss.

#### **ARTICLE 15. INSURANCE**

User, at its sole cost and expense, shall procure and maintain during the Term of this Agreement and thereafter should use of any part of the Subject Trackage by User extend beyond the Term of this Agreement expressed in Article 20, insurance adequate to cover all liability herein assumed by User and to protect Transtar and Birmingham Southern Railroad Company their Officers, Directors, Stockholders, Employees and Agents with respect to losses arising out of this agreement by User, its Officers, Directors, Stockholders, Employees, Agents, Contactors, Suppliers, etc.

Such insurance shall be placed with insurance companies acceptable to Transtar/Birmingham Southern Railroad Company and authorized to do business in the state or area in which the activities hereunder will occur. Insurers must have a minimum rating of A-, VII, as evaluated by the most current A. M. Best rating guide. Such insurance shall include but not be limited to:

- (1) Excess Liability coverage, including railroad liability contractual, F.E.L.A., and pollution liability/clean-up, with limits of not less than \$100,000,000 each occurrence/\$100,000,000 aggregate.
- (2) Automobile Liability Insurance coverage with a limit of not less than \$1,000,000 each accident for bodily injury and property damage, or \$5,000,000 if hazardous materials or substances are to be transported. The policy must include an MCS 90 Endorsement if hazardous materials or substances are to be transported.
- (3) All Risk Property Insurance, including flood and earthquake, in an amount not less than \$50,000,000 to provide protection for loss or damage to any Transtar/Birmingham Southern Railroad property or the property of others in the

care, custody and control of User, its Officers, Employees, Agents, Contractors, Suppliers, etc.

All of the above policies shall be endorsed to include Transtar/Birmingham Southern Railroad Company, their Officers, Directors, Stockholders, Employees and Agents as Additional Insureds on a primary basis without seeking contribution from any other insurance or self insurance available to Transtar/Birmingham Southern Railroad Company. In addition, all of the above policies shall be endorsed to provide waiver of subrogation to the benefit of Transtar/Birmingham Southern Railroad Company, their Officers, Directors, Stockholders, Employees and Agents.

The obligation of the User to provide the insurance herein above specified shall not limit in any way the liability or obligations assumed by the User hereunder.

In the event User or its insurance carrier defaults on any obligations hereunder, User agrees that it will be liable for all reasonable expenses and attorneys' fees incurred by Transtar/Birmingham Southern Railroad Company to enforce the provisions hereunder. User shall furnish to Transtar/Birmingham Southern Railroad Company insurance certificates evidencing compliance with the foregoing requirements and stating that the Insurers will provide 30 days advance written notice of cancellation or material alteration in any of the required policies of insurance. All Certificates of Insurance shall be in form and content acceptable to Transtar/Birmingham Southern Railroad Company. Any failure on the part of Transtar/Birmingham Southern Railroad Company to pursue or obtain the Certificates of Insurance required hereunder from User and/or failure of Transtar/Birmingham Southern Railroad Company to point out any non-compliance of such Certificates of Insurance shall not constitute a waiver of any of the insurance requirements hereunder, nor relieve User of any of its obligations or liabilities hereunder. Moreover, acceptance by Transtar/Birmingham Southern Railroad Company of insurance submitted by the User does not relieve or decrease in any manner the liability of the User for performance hereunder. The User is responsible for any losses, claims, and/or costs of any kind, which their insurance does not cover.

All coverages are to be written on occurrence based policy forms with Insurers acceptable to Transtar/Birmingham Southern Railroad Company. Claims made policy forms are subject to prior review and approval by Transtar/Birmingham Southern Railroad Company.

All insurance coverages carried by User shall extend to and protect Transtar and Birmingham Southern Railroad Company, their Officers, Directors, Stockholders, Employees and Agents to the full amount of such coverage, and all deductibles and/or self-insured retentions (if any), including those relating to defense costs, are the sole responsibility of User.

User shall also require its contractors, suppliers, sublessees, etc., to carry and furnish evidence of the above coverages.

Notwithstanding the above, User shall have the right to maintain insurance in accordance with its normal practice; i.e., User may utilize prevailing insurance policies, including deductibles and/or self-insured retentions associated with these policies. If User, in its ordinary course of business,

self-insures for any of the risks set forth above, then User may self-insure such risks under this Agreement.

#### **ARTICLE 16. CLAIMS**

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- B. Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. In the event a claim or suit is asserted against Owner or User which is the other Party's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by such Party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, a Party shall not settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).
- G. User shall indemnify and hold harmless Owner, its parent corporations, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of User's or Owner's employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency.

#### **ARTICLE 17. DEFAULT AND TERMINATION**

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first

giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right of termination by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against any other party for the recovery of damages.

#### **ARTICLE 18. REGULATORY APPROVAL**

- A. Should this Agreement require the prior approval or exemption from regulation of the Surface Transportation Board (STB), User at its own cost and expense shall promptly initiate and thereafter diligently pursue an appropriate application or petition to secure such approval or exemption. Owner, at User's expense, shall assist and support efforts of User to secure any necessary STB approval or exemption of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose on User or Owner any labor protective conditions, User shall be solely responsible for any and all payments in satisfaction of such conditions.

#### **ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE**

Owner reserves to itself the exclusive right, exercisable at any time during the Term of this Agreement, without concurrence of User, to elect to seek abandonment of all or any portion of the Subject Trackage, by giving three (3) months prior written notice to User of its intent to do so. Prior to seeking abandonment, Owner shall provide User with notice substantially similar in time and content to the notice it provides the general public of the segment of line that it intends to abandon. User shall then have the opportunity to purchase the segment of line or pursue other remedies then available by participating in the abandonment proceeding before the STB or its successor. If authority to abandon is granted by the STB or other regulatory body having jurisdiction, or if the criteria for exemption are satisfied, and User has not concluded an agreement to purchase the segment of line, then this Agreement shall terminate as to the segment of the Subject Trackage so abandoned upon the effective date of such approval or exemption.

#### **ARTICLE 20. TERM**

- A. This Agreement shall be effective the day and year first above written or, should this Agreement require the prior approval or exemption of the STB, on such day and year as the approval or exemption is effective, and shall remain in effect for twenty (20) years (the "Term"). This Agreement may be terminated (i) upon expiration of its Term, by either Party upon sixty (60) days advance written notice to the other Party of its intent to terminate this Agreement, (ii) at any time during the Term of this Agreement, by the non-defaulting Party in the event of a default by the other Party that is not substantially cured

within forty-five (45) days after the written notice of the default from the non-defaulting Party to the other Party, or (iii) in accordance with the termination provisions of Article 19 of this Agreement. Notwithstanding the foregoing, the termination of this Agreement is subject to, and shall not take effect until, the final approval or exemption of the STB or any successor governmental agency having jurisdiction over such termination has been obtained.

- B. Termination of this Agreement shall not relieve or release either Party from any obligation assumed or from any liability which may have arisen or been incurred by a Party under the terms of this Agreement prior to the termination hereof.

#### **ARTICLE 21. FORCE MAJEURE**

Neither Party shall be responsible for delays or failure to perform under this Agreement if such delays or failure to perform result from circumstances beyond such Party's control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, terrorism or threat of terrorism, war, blockade, insurrection, civil commotion, riots, water damage, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations. The Party claiming force majeure will, within five (5) business days from the date of disability, notify the other Party when it learns of the existence of a force majeure condition and will similarly notify the other Party within a period of two (2) business days after the force majeure condition has ended.

#### **ARTICLE 22. ARBITRATION**

Except for claims for injury or death to persons, or temporary injunctive relief, any dispute arising between the Parties with respect to this Agreement that is not resolved within sixty (60) days of the date of the written notice of the dispute may be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association by either Party. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator shall be borne equally by the Parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

#### **ARTICLE 23. SUCCESSORS AND ASSIGNS**

This Agreement shall not be assigned by User without the prior written consent of Owner, except in the case of: (i) an assignment to the surviving entity in the event of a merger between User and the surviving entity, when the surviving entity has unconditionally guaranteed all



obligations of User under this Agreement, (ii) an assignment to the entity purchasing substantially all of User's assets when the purchasing entity has unconditionally guaranteed all obligations of User under this Agreement, or (iii) an assignment to an affiliate of User only when User remains liable for the affiliate's failure to perform pursuant to this Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and assigns the Parties.

#### **ARTICLE 24.      NOTICE**

Any notice required or permitted to be given by one Party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may agree, and shall be addressed as follows:

If to Owner:                      Marketing Manager  
   Birmingham Southern Railroad Company  
   PO Box 579  
   6200 E.J. Oliver Blvd  
   Fairfield, AL 35064

If to User:                         Director Passenger & Joint Facilities  
   CSX Transportation, Inc.  
   500 Water St., J315  
   Jacksonville, FL 32202

Either Party may provide changes in the above addresses to the other Party by personal service or U.S. mail.

#### **ARTICLE 25.      GENERAL PROVISIONS**

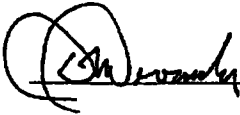
- A.    This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.
- B.    This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties.
- C.    No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by both Parties to this Agreement.

- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party to this Agreement and are in the possession or account of the other Party to this Agreement, such locomotives, cars and equipment shall be considered those of the other Party under this Agreement.
- G. This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.
- H. Neither Party may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other Party, except as otherwise required by law, regulation or ruling.

[The Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed  
as of the date first above written.

Witness for Owner:

\_\_\_\_\_

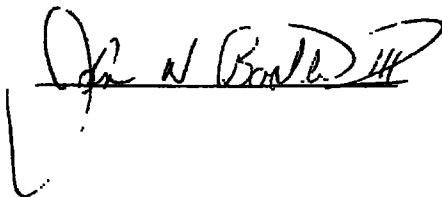
BIRMINGHAM SOUTHERN RAILROAD  
COMPANY

By: \_\_\_\_\_

Name: James H. Howell

Title: General Manager Marketing

Witness for User:

\_\_\_\_\_

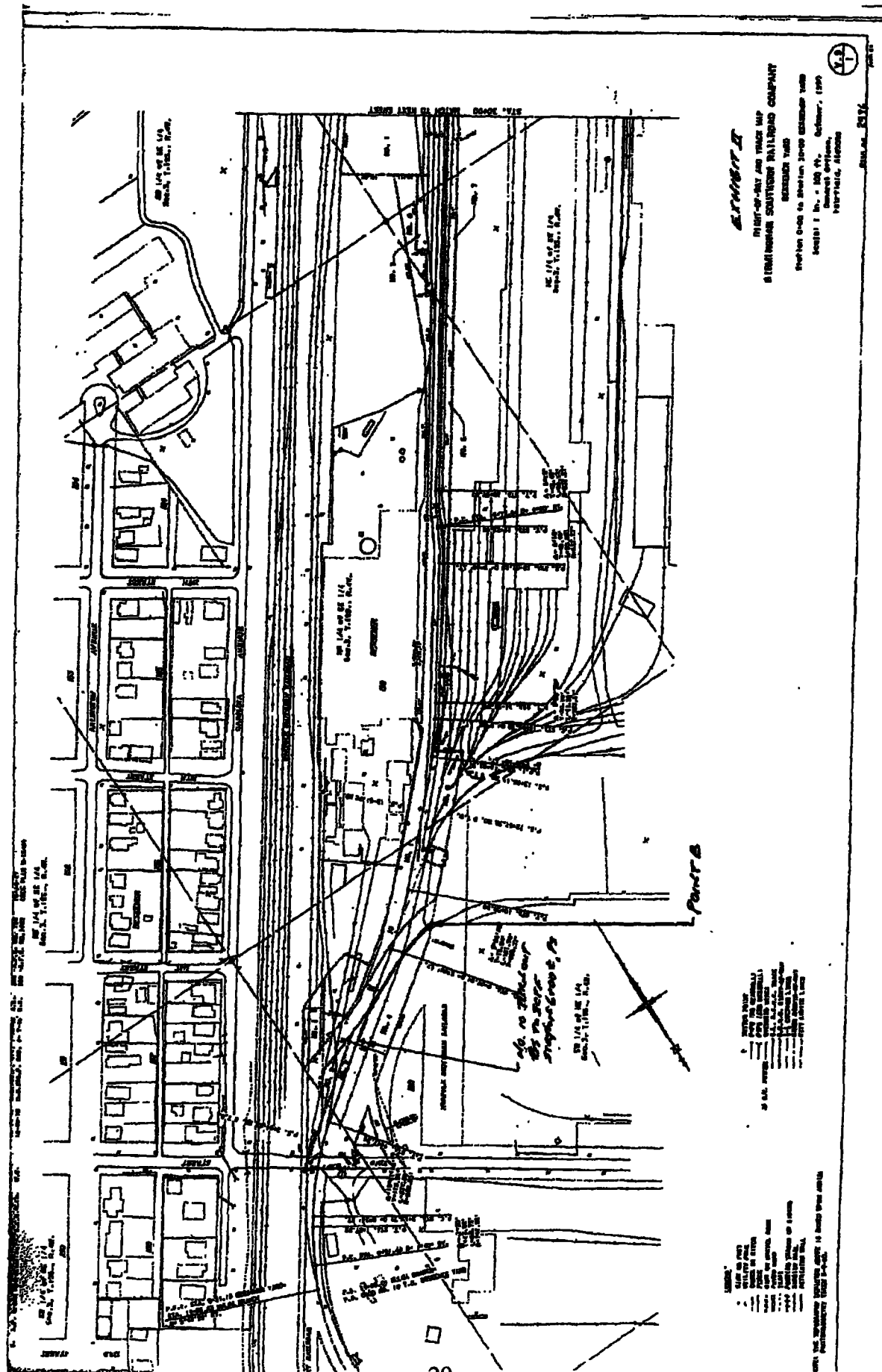
CSX TRANSPORTATION, INC.

By: \_\_\_\_\_

Name: Dr. Virginia Beck

Title: Director Passenger's IF  
Contracts





# **EXHIBIT C-FEDERAL REGISTER NOTICE**

**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

**FINANCE DOCKET NO. 35285**

**CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—  
BIRMINGHAM SOUTHERN RAILROAD COMPANY**

Birmingham Southern Railroad Company (“BSRR”) has agreed to grant generally overhead trackage rights to CSX Transportation, Inc. (“CSXT”) between the crossover of CSXT and BSRR in Woodward, AL, approximately milepost 6, Station 307+00, and Bessemer, AL at the turnout to BSRR’s Private Intermodal Container Facility (the “ICTF”), milepost 9, Station 10+00, a distance of approximately three miles (the “Line”). The overhead trackage rights will be effective on or after September 2, 2009.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35285, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC

20423-0001. In addition, a copy of each pleading must be served on Steven C. Armbrust, CSX Transportation, Inc., 500 Water Street J-150, Jacksonville, FL 32202, and Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Lou\_Gitomer@verizon.net.

Dated:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary



VERIFICATION

State of Florida                    )  
  )ss  
County of Duval                    )

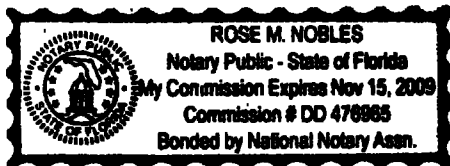
I, JOHN BOOTH, being duly sworn, depose and state that I am  
DIRECTOR JIM JACKIE of CSX Transportation, Inc., that I am authorized to make this  
verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted  
therein are true and accurate to the best of my knowledge, information and belief.

John Booth

Subscribed and sworn to before me this 31<sup>st</sup> day of July 2009.

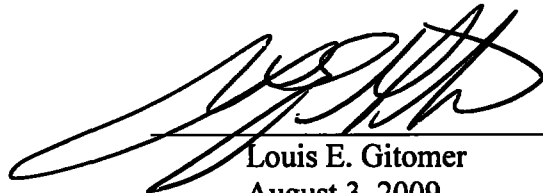
Rose M. Nobles  
Notary Public

My Commission expires: November 15, 2009



CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 35285, *CSX Transportation, Inc.—Trackage Rights Exemption—Birmingham Southern Railroad Company*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the State of Alabama.



\_\_\_\_\_  
Louis E. Gitomer  
August 3, 2009